

Price Markup in Property Purchase: A Legal Perspective on The Risk of Default and Decrease in Property Value at Auction

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ABSTRACT

Loans or credit are a commonly used financing model for new and existing businesses. The amount of credit granted is determined by the collateralized assets. However, problems often arise when the property used as collateral turns out to be valued below expectations. This occurs because property buyers become victims of price markup crimes. This study focuses on defining the boundaries of this crime in cases of price markup and the legal protections that can be provided to victims of property price markup. Consequently, the general public can avoid the risks of falling victim to such fraudulent schemes. This study delves into the intricacies of price markup crimes, aiming to delineate clear boundaries and legal protections for victims. By shedding light on these issues, we aim to empower the general public with knowledge to recognize and mitigate the risks associated with fraudulent schemes. Through a comprehensive understanding of the legal framework surrounding property price markups, individuals can make informed decisions and safeguard themselves against potential exploitation in property transactions. Ultimately, this research endeavors to foster transparency and accountability in the property market, fostering a fair and equitable environment for all stakeholders involved

Keywords:

Breach of Contract;
Credit; Law; Price
Markup; Property.

INTRODUCTION

The level of loans or credit in Indonesia is growing well. Many people want to start a business and apply for a loan as initial capital for their business. This also cannot be separated from the government's efforts to simplify regulations and provide lots of incentives so that many parties who want to try starting a business can be helped (BI: Pertumbuhan Kredit Juli 2023 Naik 8,54%, n.d.; Evi, 2021). Because starting a business requires a loan, property becomes valuable because property is one of the most common forms of collateral. Banking institutions also prefer property because property has the advantage of being collateral. First, properties tend to maintain value or even increase over time, despite market fluctuations. This provides a sense of security and certainty because the bank has collateral in the form of real physical assets (Ain, 2021 ; Gautama, 2019 ; Marheni, 2021).

Property is also considered a strong multi-purpose guarantee by financial institutions because its uses can be varied. Some of the functions of property are as a residence, place of business, or investment property. But of course property also has some risks. Risks involved in property include market fluctuations, maintenance costs, and potential losses if the property value falls. Therefore, it is important to carry out a risk analysis and consider all relevant factors before using a property as collateral (Baum, 2021; HU, 2023). However, what is especially problematic for property owners is when the value of the property they own does not match what was promised by the property provider. When it was used as collateral, the loan value obtained by the property owner turned out to be low because of this problem. This is often considered a crime to mark up property values. Of course, this is detrimental to the people who

have invested in the property because they actually have the hope that the property they own can return a profit to themselves.

This research discusses the legal protection that can be provided to property owners who are victims of property mark-up cases based on positive law in Indonesia. This research is original research where this has been proven through searches on the Scopus index and Google Scholar as well as various other journal databases. Through this research, it is hoped that readers' knowledge regarding loan and property law can develop in a better direction and avoid various forms of detrimental banking crimes.

METHOD

a. Research Problems

In general, the principle of business is to make the biggest profit with as little capital as possible. In business, there are no specific rules that regulate how much profit is appropriate to gain from selling a product. Appropriateness only applies to business ethics and morals. For this reason, house price mark ups cannot be sued legally or civilly (Kartajaya, 2021).

Legal protection for property buyers who are victims of land price mark ups is regulated by Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles. This law regulates the legal sources of property as land and buildings. Property buyers have protected rights, including the right to obtain clear and transparent information regarding land prices.

In this study, legal aspects involving property consumers, including efforts to protect against land price mark-up practices, can be explained in detail. This legal protection is important to ensure that property buyers do not become victims of unfair practices, such as marking up land prices that do not correspond to their actual value. Clear legal sources and in-depth research can help the public and interested parties understand their rights and obligations in property transactions (Shahira, n.d).

In the Indonesian context, the criminalization of property price mark-ups could have a significant impact on the business climate and consumer protection. The practice of criminalized price mark ups can harm consumers by creating a non-transparent and unfair business environment. Consumers become vulnerable to increases in property prices that are not in line with actual values, resulting in financial losses and uncertainty in property purchases. The impact also extends to the overall business climate. The criminalization of mark ups on property prices can harm the confidence of investors and business people in the property sector. This could hinder the growth of the sector and harm the investment climate in Indonesia.

The impact of the criminalization of property price mark-ups in Indonesia could be detrimental to the business climate and consumer protection. The practice of price mark-ups, which refers to adding disproportionately to the sale value of land or property, often involves activities that violate business ethics and consumer law.

In the context of the business climate, the criminalization of mark ups on property prices can create uncertainty and damage the confidence of business people. This can hinder investment in the property sector and result in a decline in public confidence in the property market. Therefore, the existence of strict regulations and effective law enforcement against criminal practices like this is very important to maintain a stable business climate.

From a consumer protection perspective, unfair price markups can harm the interests of property buyers. Journal source by (Holijah, 2014) discusses the urgency

of protecting consumers from losses due to defective products or unclear information from business actors. Criminalizing mark ups on property prices is considered a form of protection for consumers, considering that this can prevent unethical practices that could harm them. Thus, consumer protection and the sustainability of the property business climate in Indonesia are interrelated. The criminalization of mark-ups on property prices is an important instrument in creating a fair, transparent and trustworthy business environment for all parties involved.

b. Research Methods

In this research, a normative judicial analysis was carried out to examine land mark-up cases as a phenomenon in the field of legal sociology. This approach involves a review of relevant court decisions, as well as the interpretation of legal norms relevant to the case. Sociology of law is also a focus in efforts to understand how land mark-up actions affect local communities and how communities respond and interact with related laws. In addition, positive legal analysis was carried out to identify and evaluate existing legal protection for the parties involved in this case. This includes examining the laws and regulations governing land mark-up actions, as well as evaluating the extent to which the legal system is able to fulfill the objectives of legal protection for the parties concerned. With this comprehensive approach, the research aims to provide an in-depth picture of land mark-up cases from the perspective of law and legal sociology, as well as evaluating the effectiveness of the legal system in protecting the parties involved.

RESULTS AND DISCUSSION

In the history of Indonesian jurisprudence, legal history does not record many cases of land price mark-ups which then harm consumers. The crime of mark ups, however, is much better known in the context of government budgets and corruption (Gismadinigrat, 2023; Glendinning, 2023; Takdir, 2021). This confirms that in terms of business mechanisms, seeking profit is a natural thing and a person or group of people cannot be blamed for making mark ups beyond ethical limits.

However, the definition of ethical boundaries itself is highly subjective. Because ethical limits are very subjective (Negara, 2021; Hutagalung, 2022; Kom, 2021), then legally there is doubt and this doubt cannot be decided if there is no positive legal basis. If it is forced, then what might emerge is an attempt at criminalization. Criminalization is defined as an attempt to make cases that are not actually related to crime or violations of the law into something illegal. If there is encouragement like this, it will disrupt the legal system as a whole and must be avoided. Nor can it be, even though they have power, then there are laws that are made to pass certain things into legal cases. The legal principle is that it does not apply retroactively. This means that someone cannot be punished using regulations that emerged after an incident occurred. If the law applies retroactively, legal uncertainty will arise and this will move away from the function of law to create certainty among society. This uncertainty will generally give rise to concerns and inefficient and effective social functions in society.

However, in the history of Indonesian jurisprudence, there have been recorded cases of land price mark ups or at least they have been labeled cases of land price mark ups. However, the definition of land price mark up is based on the language style of public communication, not as a patented legal term. For your information, the case involves the defendants Junaidi and Salim. Both parties act as intermediaries between buyers, namely Lenova Marlius and Prof. Lucky (PT Jakarta Medika). In society, these

intermediaries are known as brokers and are non-formal jobs that are quite widely known by the public (Sadono, 2020).

In this case, Prof. Lucky bought land belonging to Lenova Marlius in Cisarua. The original price of land was 1.1 million Rupiah per square meter. However, by Junaidi and Salim, the land price was marked up to 2 million per square meter. In this case, the article charged is document falsification. The article for falsifying documents was given because Junaidi and Salim made documents that stated as if Lenova Marlius received an amount of money that was more than what they actually asked for. This makes both parties disadvantaged, especially Prof. Lucky because he lost his right to get a fair price for the land. However, the land price mark-up itself is not a problem because trying to get the maximum profit possible is not a legal practice that can be judged based on positive law in Indonesia.

In this case, the emphasis on document falsification can be seen in the alleged article, which is based on a case of document falsification based on Articles 263 and 264 of the Criminal Code which prohibit someone from using forged letters/documents for their personal interests. Apart from that, in this case there was also abuse of position. This is in accordance with legal logic that falsification of official documents is possible because someone abuses their position and power. For such actions, the law used is Law no. 31 of 1999 with a focus on abuse of authority. In particular, article 3 is a reference regarding abuse of office with a prison sentence of one to three years.

This mark-up case is different from what is discussed in this issue. In the legal issues that will be discussed in this research, the context discussed is when the promises made by the developer do not match expectations or what has been communicated. What legal steps can be used? What type of protection is realistic? (Dukeminier, 2020).

The first thing that needs to be understood is the problem model that occurs. The description of the problem that occurs is when property buyers, for example, feel disadvantaged because the property value has dropped drastically so that it cannot be resold or guaranteed to the bank (Bhakti, 2019; Dukeminier, 2020; Lauren, 2023; Utami, 2023; Yang, 2020). For example, if it is used as collateral in a bank, the results will be inadequate or beyond expectations. It also needs to be understood in this context that it is not the bank's fault that they have different standards in providing guarantees, but because there are things that are not in accordance with the promises between the property seller and the property buyer. Conditions like this often become debates and even civil disputes.

In general, there is no law that regulates cases like this. We can see this in the 1960 Agrarian Law and the legal basis for this issue actually does not exist. A company cannot be blamed for having succeeded in collecting profits that exceed targets. Furthermore, there is Law No. 5 of 1967 and Law No. 20 of 1961 which discuss matters related to land status and land control rights. However, in this case, the context of the problem is a violation in terms of buying and selling and contracts for certain land so that the legal basis used is actually more appropriate if we use the Consumer Protection Law. Apart from the Consumer Protection Law, another basis used is business ethics.

Business ethics is not binding law (Bowie, 2020 ; Nelson, 2021). Business ethics are guidelines and norms that are put forward in ensuring fairness and good business processes for all parties. Business ethics are the rules of the game in doing business. The existence of this business ethic was born from the fact that business

cannot be done alone. Everyone needs someone else to run a business. For this reason, building trust in business becomes something crucial in the future of the business world.

Contract Law as Consumer Legal Protection

Based on these things, there needs to be a comprehensive and clear solution so that there is positive legal protection for property buyers so that they do not feel disadvantaged. In this case, the strongest and most realistic legal instrument is an agreement (Cowandy, 2021; SH, 2019). Contract law in Indonesia allows all types of agreements. This is stated in article 1313 of the Civil Code. Then it is explained in Article 1320 of the Civil Code that as long as the four conditions of the agreement are fulfilled, then the agreement is valid. The four terms of the agreement include (1) There is something agreed upon, (2) The party making the agreement is legally competent, (3) it contains a certain subject matter and finally, the agreement must be about a lawful cause. Logically speaking in Indonesia, this is the strongest legal instrument in case of property price mark-up fraud.

When making an agreement, consumers need to understand what form of agreement can be submitted as evidence in court. According to Indonesian law, a stamped agreement is the most important agreement document to ensure that the agreement can be used as court evidence. The rules regarding stamped agreements are contained in Article 3 of the Stamp Duty Law (Law number 10 of 2020). The Stamp Duty Law explains holistically what documents need to be stamped. Civil documents are one of the important documents for obtaining stamp duty. This is done to avoid possible disputes in the future (Chan, 2021; Firmanto, 2019; Utomo, 2020).

Several clauses that need to be stipulated in the property sale and purchase agreement are (Beracha, 2012; Bryx, 2021; Purwianti, 2021; Nursoleh, 2022; Tkalec, 2015) :

a. Regarding location/certainty/location status

In several cases, the property company was not open about the risks and matters related to the housing development location. One of the cases that recently occurred was a housing complex owned by Lippo, namely Holland Village, where it turned out that the house was located on the bank of a river with no embankment installed. As a result, even though it had only been in use for 100 days, the houses collapsed one by one. This is an example of the developer's lack of openness regarding the location of land that is actually problematic. This will of course affect the price of the house if the house is guaranteed to the bank for loans and various other needs. For this reason, it is important to have clarity regarding status or location. Consumers also have the right to know the permit status of the property owner. As we know, there are several land rights in accordance with the Agrarian Law (UU no. 5/1960). These rights include (a) property rights: the strongest rights to control over land and are guaranteed by a property rights deed. (b) building use rights: the right to construct buildings according to permission from the government and (c) business use rights; the right to use land/property for business. Different types of rights will affect the status and price of the land, which is why the agreement needs to explain the status of the location and legal certainty regarding the granting of property location permits. Licensing that is incomplete or not according to its intended purpose will be detrimental to consumers.

b. The quality of the building will affect property prices

The quality of this building actually has to be included in the agreement so that in the future it doesn't become a problem. Several important things to discuss in building quality are building materials, then building foundations and finally, construction based on environmental construction because after all there are differences in building techniques according to the contour of the land that will be used. In construction efforts, the exact same techniques cannot be used because soil hardness and risk models are important to pay attention to. According to Indonesian law, there is no restriction on whether the contents of an agreement must contain visuals or not. For this reason, a visual explanation including the design of a property can be included in the agreement. The basis of this visual agreement is a land deed as a state document which also contains a visual product in the form of a map depiction of the land location. On this basis, explaining the agreement based on visual form is actually not something that needs to be disputed and can clarify the agreement.

c. **Conflict Resolution Methods**

The best resolution is not to go through legal channels, which is why in resolving contract problems it is necessary to prepare a mechanism. Contract resolution without going through legal channels is a process in which the parties involved in an agreement try to find solutions to disputes or problems that arise without having to bring case to court. There are several methods that can be applied to achieve this goal. First, negotiation is an initial step carried out informally with the aim of reaching a middle point that satisfies all parties. Next, mediation involves a neutral mediator who helps facilitate discussions and reach an agreement. Meanwhile, arbitration is a process in which the parties agree to let an arbitrator or panel of arbitrators make a binding decision. Conciliation is an approach that combines elements of mediation and arbitration. Additionally, there is the option to involve independent reviewers or request evaluations from experts in related fields. The most appropriate method must be chosen taking into account the nature of the dispute, the relationship between the parties, and their respective objectives. Additionally, it is important to have a written agreement regarding the chosen contract completion process. In the contract clause, there must be an explanation regarding the solution to such a problem so that it does not become a debate at a later time. Thus, in the case of this contract, legal protection is obtained to prevent a consumer from being disappointed with the final result of the property that has been purchased.

Discussion

The research provides a nuanced analysis of the legal complexities surrounding land price mark-ups in the Indonesian context. It adeptly navigates through the historical absence of recorded cases in Indonesian jurisprudence, shedding light on the prevalence of mark-ups in government budgets and corruption scenarios. The researcher skillfully underscores the subjectivity inherent in defining ethical boundaries and the potential legal uncertainties arising from attempts at retroactive criminalization. Through a specific case involving intermediaries, the analysis delves into the abuse of position and power, leading to document falsification charges. Moreover, the research astutely differentiates the discussed case from broader legal issues related to property transactions, homing in on scenarios where developer promises diverge from expectations, giving rise to potential disputes. The proposed legal solutions, anchored in contract law and consumer protection mechanisms, offer a pragmatic framework for safeguarding property buyers. The delineation of contractual clauses, emphasis on stamped agreements, and recommendations for conflict resolution mechanisms

collectively contribute to a robust and comprehensive analysis, showcasing the researcher's keen understanding of the legal intricacies inherent in addressing land price mark-ups and protecting consumers in property transactions.

CONCLUSION

The conclusion of this article is that the case of property price markups has a significant impact on consumers, banks and the overall business climate. Legal protection for property buyers who are victims of land price mark-ups still needs to be strengthened, especially in terms of enforcing business ethics and consumer protection. The principle of prudence in assessing the value of collateralized property also needs to be considered, especially in the context of property auctions.

In addition, the implementation of progressive laws can help in resolving land conflicts related to the practice of marking up property prices. Regulations against misleading advertising also need to be strengthened to protect consumers from the detrimental practice of marking up property prices. Further research is needed in this area to identify effective legal solutions to protect parties affected by property price mark-up cases.

In the context of consumer protection, there is no law that regulates cases when promises made by developers do not match the expectations of property buyers. Business ethics, such as the prohibition of over-promising and concealment of facts, can be a guide in this case. Several legal products, such as the Consumer Protection Law, also prohibit practices that are detrimental to consumers.

Rejection of claims in the property business is a violation of business ethics. Legal protection for property buyers can be obtained through a stamped agreement. The clauses of the property sale and purchase agreement need to pay attention to location, building quality and conflict resolution methods. In the case of property auctions, banks must apply the principle of prudence in assessing the value of the collateralized property. The practice of marking up property prices does not violate the law as long as it is done in accordance with applicable regulations.

Acknowledgment

Thank you to all parties who have helped this research run smoothly, especially the supervisors who have guided us to complete this research well and on time. We hope that this research can be useful for many people who read it.

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